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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,690	04/05/2001	Joseph Harbaugh	6994-1	4205
7590	08/19/2004		EXAMINER	
Gregory A. Nelson Akerman Senterfitt 222 Lakeview Avenue, Fourth Floor P.O. Box 3188 West Palm Beach, FL 33402-3188			SMITH, TRACI L	
			ART UNIT	PAPER NUMBER
			3629	
DATE MAILED: 08/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/826,690	HARBAUGH, JOSEPH
	Examiner Traci L Smith	Art Unit 3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 April 2001.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-22 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it exceeds maximum number of 150 words allowed in length. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 3,12 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims site a process of calibrating grades. This process is not described in the specification, it is merely stated that one skilled in the art would know the process. However, after a thorough internet search of the term "calibrated grading" the examiner was unable to find a definition describing how the process works.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 1-21 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

6. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

7. In the present case, claims 1-4, 6-7, 10-16, 18 and 20-21 are just abstract idea and or process and does not involve the incorporation of the technological arts .

8. Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

9. In the present case, claims 5, 8-9, 17 and 19 although they recite technological arts the do not advance the process, they merely deliver information.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 13 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by [www.gradcollege.swt.edu](http://www.gradcollege.swt.edu) (any linkage on(2000): \*March 4, 2000).
12. As to claims 1 and 13, swt.edu teaches a method for admitting students to a university, who fall below the minimum requirements of standardized tests and GPA's, to the institution while setting conditions on the admission opportunity. Once a student is meets all the requirements of their conditional admittance they are giving an unconditional admission status.(P. 7 l. 9-10, 29-25 and 37-40).
13. As to claim 20 swt.edu teaches a GRE score of 900 or above for regular admission; conditionally admitted even though you may not meet the minimum requirements.(Pg. 7 l. 10, 32-33)

#### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 4, 7, 14 and 18-19 rejected under 35 U.S.C. 103(a) as being unpatentable over [www.swt.edu](http://www.swt.edu) as applied to claim1, 13 and 20 above, and further in view of Karen W. Arenson; New York Times, "Opponents of a Change in CUNY Admissions Policy Helped Pass a Compromise Plan"; November 24, 1999.

16. As to claims 2 and 14 swt.edu teaches a method of conditional admittance using GPA's but fails to teach the standardized test range. Arenson teaches the use of standardized test scores to identify students who don't qualify for regular admission.(Pg 2 ¶ 7-8). It would have been obvious to combine the standardized test scores to identify students who would fall into conditional admittance, as test scores are a normal index score to use when considering students for regular admissions.

17. As to claim 4, swt.edu teaches the method of conditional admission but fails to teach the satisfactory criteria for at least one examination. Arenson teaches a method of placement tests to determine level of work(Pg. 2 ¶ 7). It would have been obvious to set satisfactory criteria for the examinations so as to have a guide to identify a students progress or success indicator.

18. As to claims 7 and 18, swt.edu teaches conditions for which admission is based on, however it fails to teach instruction environment. Arenson teaches enrolling students in remedial classes on the senior campus(Pg. 2 ¶ 8). It would have been obvious to combine remedial classes into the main campus program so as to provide the conditionally admitted students with the skills they would need to meet the satisfactory requirements and complete regular level courses.

19. Claims 5-6, 8-9, 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu and Arenson as applied to claims 2-4, 7-8, 14 and 18-19 above, and further in view of US Patent 6, 146,148, Nov. 14 2000, Stuppy.

20. As to claims 5 and 16 Arenson fails to teach a method of instruction as condition of admittance but fails to teach distance instruction. Stuppy teaches a method of

automated instruction creating a student workbook(C.1 l. 67, C. 2 l. 1, 6). It would have been obvious to combine the conditional instruction with the technology of distance education to make it more cost effective and easily accessible.

21. As to claims 6 and 17 Arenson teaches a method of instruction for conditionally admitted applicants but fails to teach an electronic method for delivering instruction. Stuppy teaches electronically generating instructional material(C. 2 l. 3-5).

22. Stuppy further teaches collecting student data in response to instructional material(C. 2 l. 7-8).

23. Stuppy also teaches collecting student data from student to teacher.(C. 2. l.20-21). It would have been obvious to combine the technology used by Stuppy in Arenson' instruction method so as to conserve time and money.

24. As to claims 8 and 19 Arenson fails to teach remote online instruction. Stuppy teaches instructors teaching a plurality of students at different arrangements in completely different locations.(C. 5 l. 15-16).

25. Stuppy further teaches teacher and student participation online(C. 5 l.21-22)

26. It would have been obvious to combine the online technologies with the teachings of Arenson for a more interactive, accessible and cost-effective instructional environment.

27. As to claim 9 Arenson fails to teach a method of administering and grading an examination online. Stuppy teaches a method of mastery testing to determine the skill of students during a later session with results stored and used on the server(C. 7 l. 41-46). It would have been obvious to combine the electronic technologies of Stuppy to the

teachings for Arenson to have a method of assessing student level in an efficient and accessible manner.

28. As to claim 21 swt.edu teaches a paper method of admitting applicants conditionally. Swt.edu fails to teach an electronic method of admitting the students and completing the conditions of the admission electronically. Stuppy teaches an automated assessment and testing through a multimedia interface and answers questions electronically. Tests are scored and analyzed by computer then utilized to generate a program suited for the student. (C. 4. I. 40-56)

29. It would have been obvious to combine the online teachings of Stuppy with swt.edu to advance the process with the use of technology as well as a more accessible and efficient process.

30. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu and Arenson as applied to claims 2, 4, 7, 14 and 18-19 above, and further in view *New Models to Assure Diversity, Fairnes and Appropriate Test Use in Law School Admissions. A Publication of the Law School Admission Counsel*; October 1999(hereafter referred to as LSAC).

31. As to Claim 10 swt.edu teaches an admission compiling process but it fails to teach the method with the use of LSAT scores. LSAC teaches a method of using LSAT scores as a part of the admission decision making process.(Pg. 14 ¶ 7, 'Academic Factors'). It would have been obvious to combine the teachings of LSAC to swt.edu since swt.edu's process was for general graduate programs and the LSAT a specific assessment test for Law schools.

32. As to claim 11 Arenson teaches a method of using test scores and GPA's in the admissions decision process but fails to the process using the LSAT specifically. LSAC teaches a method of using the LSAT as an admissions criteria(Pg. 14 ¶ 6-7). It would have been obvious to combine the teaches of Arenson' admissions process with that of the LSAC as applicants applying to Law school would take the Law School Assessment Test(LSAT) as part of the requirements for admission.

33. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu as applied to claims 1, 13 and 20 above, and further in view of US Patent 6, 088, 686, July 11, 2000; Walker et al.

34. As to claim 22 swt.edu teaches a method for determining a students qualifications for admissions but it fails to teach an electronic computer process for completing the method. Walker et al teaches a method for electronically submitting an application and performing the steps of the acceptance process.( C. 2. I. 1-8) It would have been obvious to combine the teaches of Walker into swt.edu as they are both the automation of an application review process.

35. Walker et al., further teaches program requirements for new or existing customers that are systematically ranked(A, B, C and D) and recommended decision and required credit policies are appropriately completed(C. 6 I. 45-58). It would have been obvious to combine the teachings of Walker with swt.edu so as to have codes attached to the required admissions criteria data so a computer program can read and process the information.

Art Unit: 3629

36. Walker continues to teach a method of enrolling the applicant for the loan which they have been approved for as an acceptance of the offer and enable the participation in the program (C. 8 I. 51-55; 67-68 & C. 9 I. 1-2). It would have been obvious to combine the enrollment acceptance of Walker with swt.edu so that both the school and the student have an agreement of the admissions condition and are able to begin the course requirements set forth by the admission status.

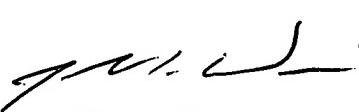
37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2209862A Montessori Teachers Centre Limited, May 24, 1998. An educational kit which uses the Montessori approach to education where by the kit is adapted to be used in schools without the need to produce handmade material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L Smith whose telephone number is (703)605-1155. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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